Supreme Court, U.S.
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No. 98-1324

IN THE SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1998

MITCHELL SWARTZ - PETITIONER

vs.

INTERNAL REVENUE SERVICE, - RESPONDENTS
MARGARET M. RICHARDSON, COMMISSIONER (ret.),
CHARLES O. ROSSOTTI, COMMISSIONER
WILLIAM CAINE, DISTRICT DIRECTOR,
LAURA MARTIN, THOMAS LOUGHRIN,
PETER BOUSNAKIS, PETER SORENTINO,
STEPHEN DAIGE, ROBERT CHAPUT, ALL INDIVIDUALLY
AND AS OFFICERS

May 27, 1999

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

12 pp

SUPREME COURT OF THE UNITED STATES

Typographic Corrections To "Reply"

Page 4, line 30, delete 2nd word "California"

Page 8, line 15, 5th word is "committed"

Page 9, line 3, 4th word is "that"

Page 9, line 26, 6,7th words are "controlling authority"

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1. The Petitioner submits this Reply Brief because Respondent's "*Brief in Opposition*" has a number of omissions, misstatements of fact contradicted by evidence in the record, and attempts to minimize and change the issues, while attacking the Petitioner's character with false statements. This case is not about post-divorce matters, but is about a Federal agency run amuck ignoring both Court orders and true authority, thereby depriving Petitioner of Constitutionally-protected due process.

2. Respondent's "*Brief in Opposition*" omits that sole jurisdiction for Plaintiff's divorce case, was, and remains, in the Commonwealth of Massachusetts as Defendants were informed more than seven years ago. It also conveniently omits that an Orange County Family Court Judge cited the lack of jurisdiction in California (Exhibit 10).

Respondents Finally Admit Petitioner Paid On Time

3. Petitioner thanks Respondents for finally admitting, *"Petitioner overpaid his federal income taxes for 1989 and 1991 in the amounts of $11,245 and $1,954, respectively"*. This key admission is significant because, by stating at last what the Petitioner has said all along, it confirms that jurisdictional prerequisites have been met. The tardive admission is reprehensible because had it been stated earlier, the outcome, implications, and relevant laws would have been different, and there would have been resolution of some of the issues. Defendants have essentially said that they have repeatedly misrepresented facts upon Federal documents and have given false testimony in a proceeding which has had bearing upon said proceeding [People v. Pierce, 66 Cal. 2d 53 (1967)]. In this case, Petitioner's cashed checks were ignored with no fair accounting. Timely overpayments were ignored, and more assets were seized. Just because Defendants transferred Petitioner's overpayments, does not mean that Petitioner did not pay. Petititioner did; corroborated by the tardive admission by Respondents. Yet, at least three (3) times, the Defendants knowingly participated in the preparation or execution of at least one bad warrant (court paper) for ulterior purposes and/or wrongful motives [Green v. Elgie, 5 Q.S. 99, 1843].

Respondents Tardive Admission Indicates Petitioner Does Have A Right To Relief

4. The Respondents claim, *"Petitioner did not establish a claim or right to relief."* However, at the time of the Default, the court already found, pursuant to Rule 55(e) of the Federal Rules of Civil Procedure, that Petitioner had a claim or right to relief by evidence satisfactory to the court, and now Respondents - albeit quite late - have at last admitted that Petitioner fully paid [Commissioner v. Shapiro, 424 U.S. 614, 628 n.10 (1976)]. Most importantly, the Respondents tardive admission, at variance with their claims previously in Federal Court, demonstrates saliently that plaintiff has shown that the government cannot prevail on the merits.

Petitioner Did Not Seek A Reduction In Taxes

5. The Respondents claim, *"No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c)".*

However, the implication is false. Petitioner did not seek to reduce his taxes, but only to get credit for his taxes which were paid on time, filed with the correct administrative forms. Respondents have falsely stated that Petitioner did not pay his taxes, and then they falsely stated Petitioner sought a reduction in taxes. Both were knowingly false; Respondents continue to backpedal.

The Liens, Levies And Summons Were For Taxes Already Paid

6. The Respondents claim, *"Petitioner's effort to enjoin the IRS from using liens, levies and summonses to collect his 1990 and 1992 taxes is similarly barred by the express terms of the Anti-Injunction Act, 26 U.S.C. 7421(a) (Supp. III 1997). That statute specifies that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person."*

Respondents finally admit Petitioner paid his taxes, so it is obvious that the Defendants had no right to recollect the same taxes, repeatedly through seizures of various accounts and overpayments. Second, the levies and summons were made without the mandatory required signature of District Director matching the typed name below it as

required. Thus a pattern of lawlessness and violations of civil rights was created by the Defendants.

Child Support Was Paid Despite The Innuendo

7. The Respondents falsely claim, *"Instead of refunding these overpayments to petitioner or applying them as a credit against his taxes due for other years, the Internal Revenue Service paid them to the Orange County, California, District Attorney's Office, Child Support Enforcement Division. This was done at the request of the California authorities, pursuant to Section 6402(c) of the Internal Revenue Code, 26 U.S.C. 6402(c), to satisfy a portion of petitioner's past-due child support obligations".*

This allegation is untrue for three (3) reasons. Respondents continue to falsely state there was purported child support due thereby impugning the Petitioner who has regularly been sending child support checks each and every month and did not owe child support (Exhibits 1,2 4,5; Appendix 12). There was, and is, no past-due child support obligation. The false statement by Respondents stands contradicted by unrebutted verified Declarations, the unanswered original Complaint [Appendix 363-377, 378-383, 384, 385, Addenda A4, A5], signed agreements [Addenda A8-A11], and Court orders from two states [Addenda A1-A3]. Second, perhaps most importantly, there has never been controlling authority in California. The state having control was, and is, Massachusetts based upon Court orders by the two states, but conveniently ignored by the Respondents. There has never been a California Divorce, or a California action except to return the case to Massachusetts. The only lawful California order confirms that the Plaintiff's case has Massachusetts jurisdiction.

Third, there has been a coverup by the Defendants for years. As California's collection office has stated -also ignored by Respondents-, **"Correspondence in the file indicates that (the third party) requested that this matter be closed by letter dated December 18, 1995"**. Defendants arrogantly and recklessly ignored the law, Court orders from two (2) states, Congressional orders and inquiry, and even the request by the third party to stop collecting the money.

Retaliation Is Obvious Since Respondents Finally Admit That Petitioner Paid His Taxes

8. The Respondents claim, *"Petitioner then moved to enjoin enforcement of the various liens, levies and summonses that the Service had issued in an effort to obtain collection of the 1990 and 1992 taxes owed by petitioner (Add. xi, xii, xiv). Petitioner alleged that these collection actions were taken to harass him in retaliation for the filing of his suit."*.

This was harassment because Respondents have finally, reversed some of their previous intentionally false statements, and have admitted Petitioner did pay. Harassment is confirmed because Defendants systematically and unethically and unlawfully took -- and then took again -- assets for "taxes" already paid. The seizures included labeled child support bank accounts which are prohibited by Congress from such seizure.

26 U.S.C. §6402 Is Inappropriate

9. The Respondents falsely claim, *"There is no conflict among the circuits concerning the proper interpretation of the plain language of Section 6402(c)."*

There are six problems because §6402 is not relevant. Respondents ignore that they are not permitted to apply 6402(c) pursuant to the governing provisions of 42 U.S.C. §664 (a), 26 U.S.C. § 6402, 651, 652, 667, and 1307 [Addenda A4 and A5 and Sec. 667; Appendix 290-295, 299-308)]. First, Sec. 651 deals with obligators who flee the state (Appendix 288), but is ignored by the Defendants, because it states that it cannot apply to the Plaintiff because Plaintiff did not leave his state (i.e. Massachusetts; Addenda A1-A3, A8, A10). It was the third party that left the state exploiting temporary orders (Addenda A12, A13, cf. Appendix 12, 204-290. All issues were remanded back to Massachusetts California (Exhibit 3; Addendum A14). Second, given Sec 667 and Exhibit 5, these statutes cannot be used against the Plaintiff (Exhibits 1-5, Appendix 279, 287, 288). Third, §6402 is not relevant because the applicable period of limitation was over. Fourth, §6402 is not relevant because there was no acceptance by Plaintiff. He informed Defendants exactly how to allocate said overpayments (Exhibits 19, 28), and the Courts have considered this issue of allocation [Revenue Ruling

73-305 or 79-284. United States v. Pepperman, 976 F.2d 123, 127 (3d Cir. 1992; Lucy Cameron v. IRS (D.C. Civil Action No. 90-02141)]. Fifth, Plaintiff did and does not owe any money. Sixth, fraud or error has been simply ignored by the Defendants who were notified. The Defendants were negligent (Appendix 290; Sec. 1307) to willfully ignore those facts; instead wrongly maliging the Petitioner.

Massachusetts Has Sole Jurisdiction

10. The Respondents falsely claim, *"Petitioner's tax overpayments were remitted to California under what is known as the tax refund intercept program (TRIP)....The local agency submits the name and social security number of the delinquent parent to the state bureau."*

Respondents conveniently ignore that the Massachusetts court system has sole jurisdiction based on law, stipulation, Agreement, and Court orders in two (2) states -- Massachusetts and California. An Orange County Family Court Judge, whom Petitioner's ex-wife appeared in front of regarding an attempt to change the child's last name to her new husband's name -- against Massachusetts Orders, and against the Stipulation -- denied her Motion citing the lack of jurisdiction in California.

There Was No Authority And No Jurisdiction

11. The Respondents falsely claim, *"That statute provides a mechanism for States to notify the Secretary of the Treasury of past-due support obligations and directs the Secretary to "remit the amount" of an overpayment "to the State and notify the person making the overpayment that so much of the overpayment as was necessary to satisfy his obligation for past-due support has been paid to the State." 26 U.S.C. 6402(c)".*

This allegation is not relevant because California was not the correct state based upon Court Orders from both California and Massachusetts. There never was any legal authority in California. There was, and is, no "past support obligation". Not one single proper piece of paper was filed in any Probate Court except where the California Court decided that jurisdiction was to remain in the Commonwealth of Massachusetts (Addendum A1).

The Complaint Involved More Than Simple Transfer Of An Inapplicable Law Used Without Authority

12. The Respondents claim, *"The district court issued an order setting aside the default and granting the government's motion to dismiss this case for lack of subject matter jurisdiction. The court concluded that (what is now) 26 U.S.C. 6402(e) (Supp. III 1997) expressly precludes petitioner from proceeding in federal court to challenge the transfer of his tax overpayments to California under Section 6402(c)".*

This is a misstatement because it identifies only a small part of the complaint. Defendants have unlawfully attached, or have taken, almost $100,000 of Plaintiff's assets; an amount even greater than cited by the Accountant's Declaration which only dealt with the illegal "tax" seizures. Only a few percent of the money has been accounted for; very little of it was involved in the transfers conducted without one iota of authority or jurisdiction. And only now in their Opposition Brief, do Respondents finally admit that Petitioner has paid his taxes even though no credit was given for the tax payments (Exhibits 7 through 13, 57, 58; Addenda A1-A11).

The Defendants Took Much More Than Two Checks

13. Respondents claim *"petitioner filed this action against the Internal Revenue Service and its Commissioner and a District Director to challenge the transfer of his tax overpayment to the California authorities."*

This is an understatement. Furthermore, it is a smoke-screen and red herring for the simple fact that the Defendants have failed to give credit for taxes timely paid. No credit has been given to this date for the payments or overpayments. Petitioner overpaid all taxes in 1989, 1990, 1991, and 1992. As discussed in the unrebutted Declaration of the Accountant, **"To date, Dr. Swartz has received no credit for payments in 1990 amounting to at least $34,000."**

Defendant's own Area "D" Division (Addenda A5, A6) confirmed Petitioner's assertions, and Officers of the Court and a Congressman (Exhibits 2,1) wrote of the unfair treatment and illegalities being committed by the Defendants against the Petitoner. In an early effort to resolve this matter, Plaintiff was told there would be no access to either an IRS supervisor or one of the purported ombudsman. Thus, Petitioner

gave evidence of errors and fraud to the Respondents who did nothing but attack the Petitioner and coverup the matter. Respondents egregiously produced false federal documents [Exhibits 1,2,5,6,41,42] because of their unlimited powers to inflict fraudulent liens and levies, removal of child support account funds, seizure of IRAs and medical insurance money - even when Petitioner paid on time, with the correct forms. Instead Plaintiffs bank accounts and child support accounts suddenly registered zero. These improper seizures occurred without the requisite prior notice, without reason, and without full accounting by Defendant despite explicit law to the contrary.

The Defendants Acted Recklessly And Intentionally

14. The Respondents claim, *"..the agency's compliance with the requirements of Section 6402(c)- by remitting petitioner's overpayments to California upon the State's certification that taxpayer had past-due child support obligations was manifestly not in "reckless" or "intentional" disregard of the internal revenue laws."*

What could be more reckless than recollecting for taxes already paid? What could be more reckless than ignoring Orders from two state Courts? None of the Court orders, stipulations, faxes, or letters, ever deterred the Defendants from their well known pattern of malicious prosecution, persecution, usurpation of civil rights. Defendants elected to repeat their unlawful activities anyway [471 U.S. 462, 472; Sawtelle, 70 F.3d at 1387]. What could be more reckless than taking clearly labeled child support accounts which are putatively protected based on laws that Congress passed to prevent just such reprehensible actions? What could be more reckless than ignoring errors or fraud? Defendant purportedly has a code where they are supposed to investigate problems and fraud. Where were they for Petitioner?

Federal Law Is The Controlling Authority

15. The Respondents claim, *"Section 7433(a) was amended by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105206, § 3102(a)(1)(A), 112 Stat.730. As amended, Section 7433(a) allows a wrongful collection action against the United States if IRS employees disregard any provision of the internal revenue laws "recklessly or intentionally, or by reason of negligence ... The*

amendment applies to actions of IRS employees occurring after July 22, 1998, and is not applicable to the instant lawsuit."

Defendants purport that they are not responsible because full truthfulness was not required before July 22, 1998. In fact, Defendants have intentionally disregarded their own records, internal revenue laws, and Court orders. Although Plaintiff has paid all tax (Exhibits 7, 8, 9, 10, 11- 12, 13), Defendants have fraudulently, recklessly, and with malice helped to destroy the credit and livelihood of the Plaintiff including by illegal liens and seizures. Thus, Defendants have defied Federal law, the US Constitution, and due process, and have inflicted pain and suffering, by use of a combination of fraud, and usurpation of civil rights. In this case Defendants have violated statute (Exhibits 3,5,6,14-21,28,42-51; Appendix pages 161, 207-212, 296-333), their own regulations (Exhibits 6,14-21,28,42,49-51,56), other statutes (Exhibits 19,20,29-32), and have commit civil rights violations (1-4,6,14-17,19-21, 28,34,35-37,43-51,56), have attacked US citizens (Exhibits 6,19,20,27,42-48; Appendix pages 309-335), and have violated UN law in this case (Exhibits 34 through 37). Plaintiff is entitled to sue and is entitled to damages (Exhibit 20, Griswold, v. USA). Under Internal Revenue Code Section 7430, Section 292(a), Plaintiff can prevail and establish that the position of the IRS was unreasonable especially given the cashed checks with no credit given, false liens, and harassment (Exhibit 23; Miklautsch v. Comm, No. A89-291 Civil, 11/6/90].

Petitioner Satisfied The Anti-Injunction Act

16. The Respondents claim, *"The court noted that petitioner's request for injunctive relief against these tax collection actions was, in any event, barred by the Anti-Injunction Act, 26 U.S.C. 7421(a) (Supp. III 1997)."*

The Supreme Court has recognized that a suitable alternative remedy is to pay the tax, and sue for a refund [Enochs v. Williams Packing & Navigation Co., Inc., 370 U.S. 1 (1962)]. The Supreme Court held that a taxpayer must pay the full amount of the tax which has been assessed before he or she can initiate an action for refund under Section 1346(a)(1) [Flora v. U.S., 362 U.S. 145 (1960)]. Must Petitioner pay the

tax over and over and over? By civilized custom, people paying by check are given credit, but in this case, Respondents have only admitted a decade later than Petitioner paid. The cashed checks exceeding the amount of the requisite tax for each and every year, and the admission by the Respondents satisfy both Enoch and the Nut Margarine conditions. In addition, US Statute Sec. 7422 explicitly specifies that Plaintiff is entitled to said refund and can sue for the return of said refund (Exhibit 14). The government cannot prevail on the merits.

Ignoring Court Orders From Two States Is An Obvious Civil Rights Violation

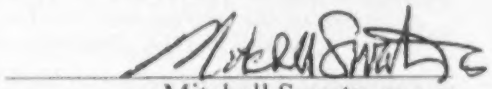
17. The Respondents claim, *"Petitioner based his claim for damages on his allegation that the IRS had violated his civil rights by intercepting his tax refunds and had denied him due process by transferring the overpayments to California without affording him notice and a hearing. The assertion that the TRIP program deprives federal taxpayers of due process of law was fully addressed, and correctly rejected, in Anderson v. White, 888 F.2d at 991-995".*

However, these are understatements and irrelevant for several reasons. Plaintiff had a prior court orders, sole jurisdiction in Massachusetts, and Agreements so the civil rights violations described in the above-entitled action would not occur, and such was not the case in Anderson v. White, 888 F.2d at 991-995. There have been civil rights violations because Defendants were reckless, especially after being informed by an Assistant DA, by a US Congressman, and after being shown orders from two states. The civil rights violations were wrought because Defendants have ignored true controlling -- Court orders from two states.

Third, there have been civil rights violations because the IRS did not merely intercept tax refunds and give them to a third party in violation of Court orders from two states and Federal law; rather, the IRS also seized assets for money already paid including Congressionally-ordered lien-proof child support accounts. Fourth, there have been civil rights violations because Defendants' reckless actions encouraged alienation of affection between Petitioner and his son (Griswold v. Connecticut, 85 S.Ct. 1678) and other civil rights

usurpation, and have frustrated and hindered efforts to enforce Court orders and judgments (Exhibits 8 and 9 of the original Complaint). Defendants have violated Plaintiffs rights to the 14th Amendment's "equal protection" clause [US. Code Annotated, Frontiero v. Richardson, 93 S.Ct. 1736, 411 U.S. 677; Weiss v. Weiss, 436 N.Y.S. 2d. 862, 52 N.Y. 2d. 170 (1981)]. Furthermore, despite the Sixth Amendment, Plaintiff was denied his right to confront opposing witnesses and the right to compulsory process for obtaining favorable witnesses including the right to an opportunity to be heard before losing any liberty or property rights. Defendants have clearly deprived Plaintiff of Rights Under Color of Law [18 U.S.C. § 242], and pursuant Gamez v. Toledo, 100 S. Ct. 1920, Plaintiff asserted that this is a federal civil rights suit.

Respectfully submitted,



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Certificate Of Service

I certify that three copies of the above Petition have been mailed first class prepaid to the Defendants' attorney of record, Attorney Seth P. Waxman, Office of the Solicitor General, US Dept of Justice, #10001, Washington, D.C. 20530, this May 28, 1999.

Certificate Of Mailing

To Whom it Does Concern:

I hereby certify that this Petition, forty copies, has been deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to

"Office of the Clerk SUPREME COURT OF THE UNITED STATES 1 First Street, N.E. Washington, DC 20543" on May 28, 1999